

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**BROOKLYN BOTTLING OF MILTON,
NEW YORK, INC.**

Plaintiff,

-v.-

ECUABEVERAGE CORPORATION,

Defendant,

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Civil Action No.

07-CV-08483-AKH

**DEFENDANT ECUABEVERAGE CORPORATION'S
NOTICE OF MOTION
AND MOTION TO DISMISS COUNTS I AND II FOR LACK OF STANDING,
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

PLEASE TAKE NOTICE that Defendant Ecuabeverage Corporation ("Ecuabeverage"), pursuant to Fed.R.Civ.P. 12(b)(6), will move, and hereby does move, for an *Order* dismissing Counts I and II of the *Complaint* for failure to state a claim upon which relief can be granted, on the ground that Plaintiff Brooklyn Bottling of Milton, New York, Inc. ("Brooklyn Bottling") is not the "registrant" of U.S. Trademark Registration No. 1,474,395, as defined by §45 of the Lanham Trademark Act, 15 U.S.C. §1127, and therefore lacks standing to bring the trademark infringement claims, pursuant to §32(1)

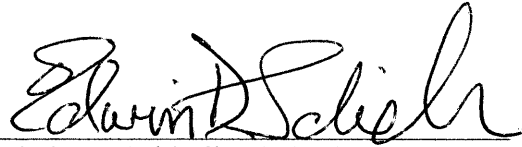
of the Lanham Trademark Act, 15 U.S.C. §1114(1), alleged in Counts I and II of the *Complaint*.

Respectfully submitted,

ECUABEVERAGE CORPORATION

Dated: November 5, 2007

By

A handwritten signature in black ink, appearing to read 'Edwin D. Schindler', written over a horizontal line.

Edwin D. Schindler (ES-7882)

Attorney for Defendant

Five Hirsch Avenue

P. O. Box 966

Coram, New York 11727-0966

Telephone: (631)474-5373

Fax: (631)474-5374

E-Mail: EDSchindler@worldnet.att.net

EDSchindler@optonline.net

CERTIFICATE OF SERVICE

I, EDWIN D. SCHINDLER, hereby certify that I served a true, and complete, copy of *Defendant Ecuabeverage Corporation's Motion to Dismiss Counts I and II for Lack of Standing, Pursuant to Federal Rule of Civil Procedure 12(b)(6)* upon the following counsel for Plaintiff Brooklyn Bottling of Milton, New York, Inc., via First-Class Mail, postage pre-paid:

Jeffrey E. Jacobson
Bruce E. Colfin
JACOBSON & COLFIN, P.C.
60 Madison Avenue, Suite 1026
New York, New York 10010

on November 5, 2007.

A handwritten signature in black ink, appearing to read 'Edwin D. Schindler', written over a horizontal line.

Edwin D. Schindler (ES-7882)
Attorney for Defendant